

# Arizona Drug Endangered Children (DEC) Program



Office of the Arizona Attorney General  
**Attorney General**  
Terry Goddard



# Background

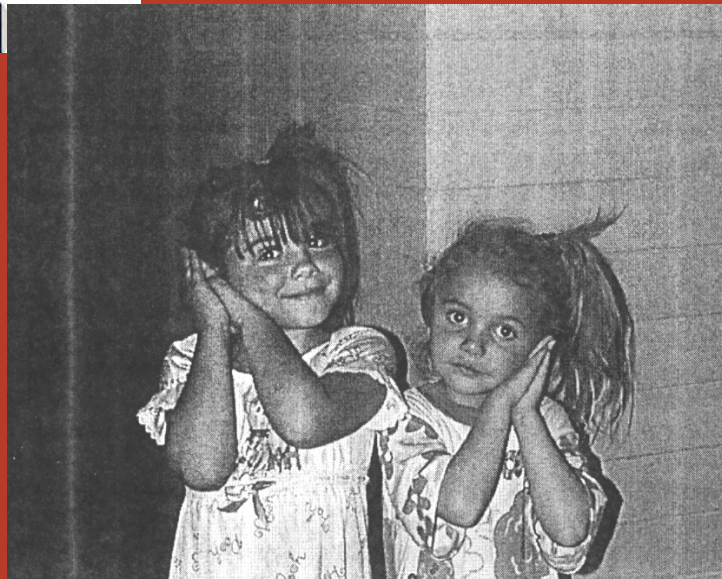
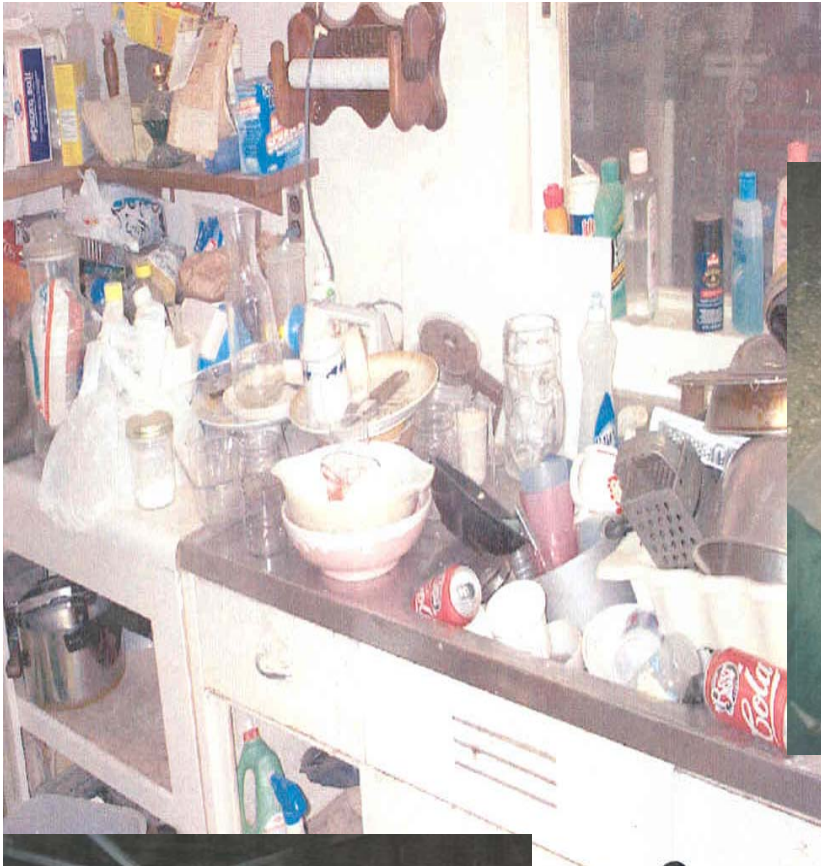
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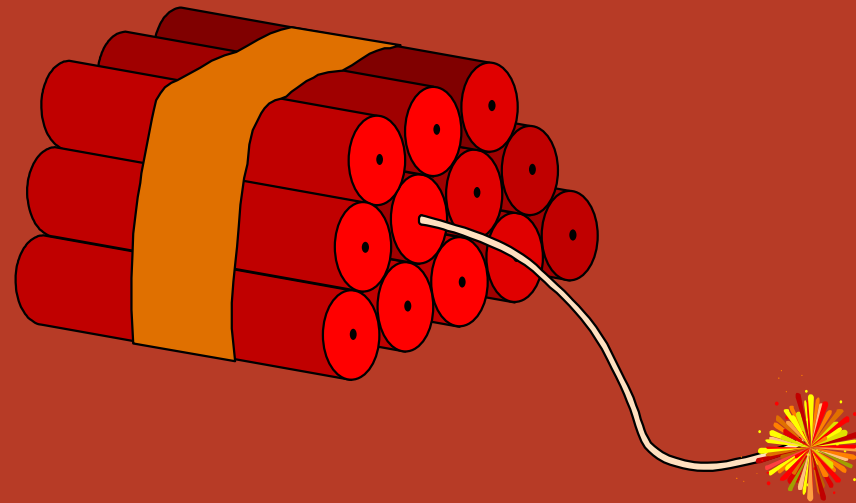
- Established April 2000
- Governor Napolitano (then Attorney General) responds to meth labs with children present
- DEC Task Force formed
- Written protocol developed October 2003
- Internet site and other public awareness become priority October 2003

# Goals of the Program

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- Break the cycle of child abuse caused by those who manufacture, sell and abuse dangerous drugs
- Employ a collaborative, multi-disciplinary response team to respond to children exposed to drug environments





# ■ Addressing the Problem of Meth Labs

# Methamphetamine?

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- Legal: Dangerous Drug
- Practical: Highly addictive CNS stimulant
- Big Problem: Easily manufactured





# Methamphetamine Lab?

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- Not a chemistry classroom

- “Labs”

- Where?



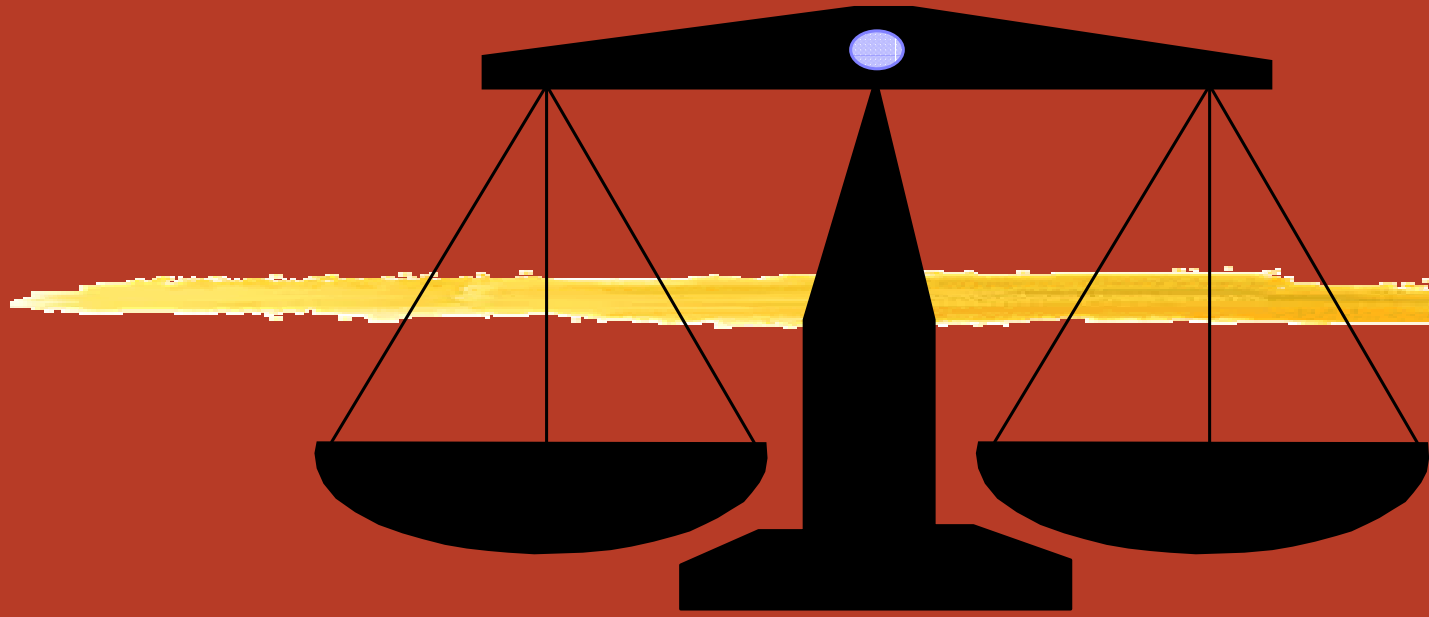


# Dangers of Meth Labs

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- Explosion/Fire
- Exposure--Toxins
- Chemical ingestion
- Unsafe air quality
  - The “meth atmosphere”
  - Colorado studies
- Unsanitary/neglectful living conditions





# The DEC Task Force

# Team Approach

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- Multidisciplinary Approach
- Agencies Involved
  - Prosecution
  - Narcotic/Drug Detectives
  - Child Crimes Detectives
  - CPS
  - Chemist
  - Physicians

# Prosecutor

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- Coordinate Task Force/Training Component
- Provide legal advice and respond at request
- Prosecute drug crimes, child abuse, endangerment, and other common crimes
- Track parallel dependency cases

# Law Enforcement

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- Drug Investigator
- Child Crime Investigator
- Overlap
  - Dual role & cross-training



# Drug Investigation

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- Contact CPS
- Contact/designate Child Abuse detective
- Contact Crime Lab
- Good photography and diagram
- Air Quality
- Sample the obvious/be creative
- Remediation law compliance

# Child Abuse Investigation

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- Forensic interview
- Work with CPS
- Measurements
- Photographs, diagrams and ventilation
- Samples to support child abuse
- Supplements, etc. to case agent

# CPS

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- Primary function: Protection of children
- Serve TCN
- Photographs
- Care for children at scene
- Interviews of parents/caregivers
- Caution: *In re Timothy C.*
- Interviews of children

# CPS

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- Remove children from scene
- Transportation to physician
- Locate children not present at scene
- Arrange for medical examination
- General care--bathing, food

# CPS

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## ■ Placement of Children

### ■ Other family members

- Criminal history investigation
- House visit
- 17 item child safety form

### ■ Shelters

### ■ Foster Homes

### ■ Crisis nurseries (up to age 11)

### ■ Emergency receiving home (infants)

# CPS

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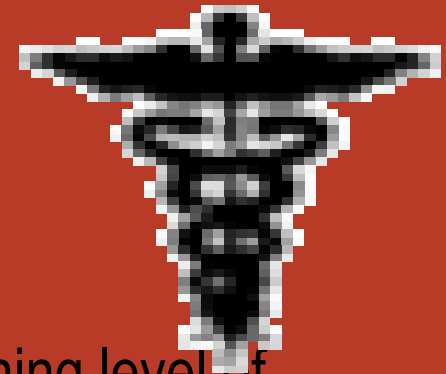
- Dependency Petition
- Reunification
- Termination of parental rights
- Work with AG



# Physicians

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- Conduct physical exam on children
- Developmental screen
  - To determine developmental age
  - Based on physical, cognitive and social functioning level of children
  - Impaired or developmentally delayed?
- Urine samples within 12 hours or ASAP up to 48 hours
- Conduct follow-up exams (15-30 days)



# Physicians

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- Full medical report to document findings
- Expert witness
- Signs of exposure? Respiratory problems, chemical burns, skin infections, headaches, nausea
- Size? Normal, underweight

# Chemist

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- Forensic Criminalist: Expert scientific witness
- Tests residue, staining, substances, chemicals, toys, cribs, clothing, etc...
- Conclusion: Consistent with clandestine lab
- Lab reports

# Collaborative Approach

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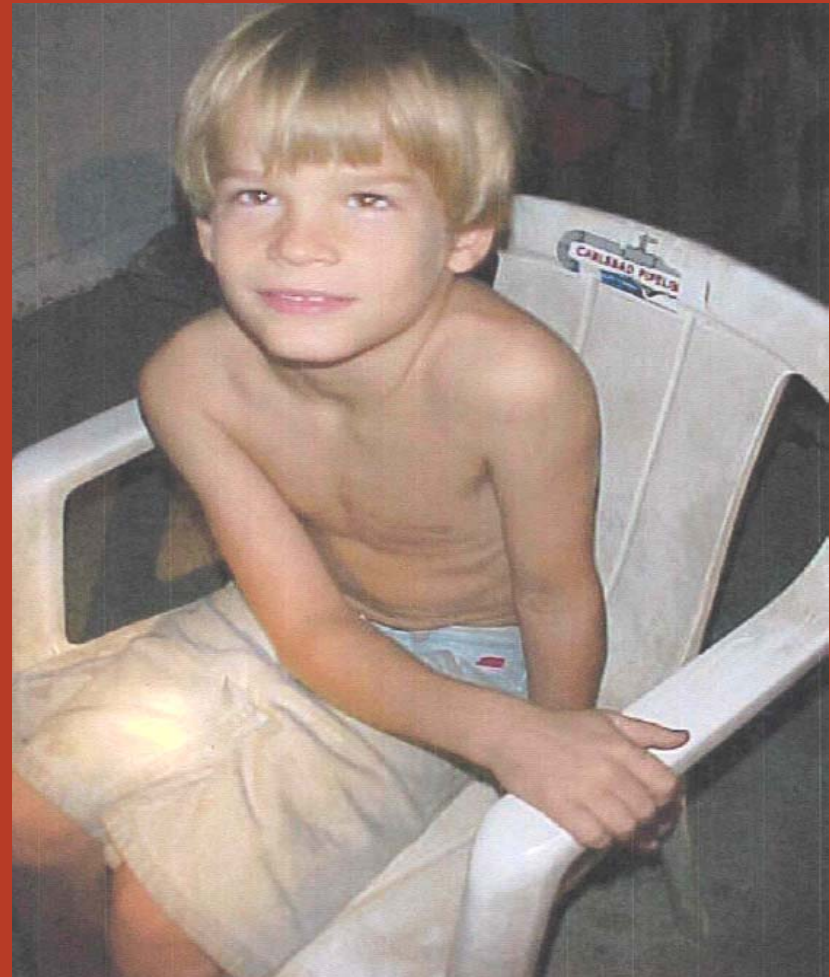
- Law enforcement and CPS work together to ensure well-being of children
  - CPS accompanies investigators if children are known to be present before warrant is served
  - CPS responds to scene if children are discovered
- Law enforcement, CPS and physicians are available to provide rapid response
- Prosecutor works with law enforcement, CPS and physicians to facilitate management of case

# Building a Task Force

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- Meet regularly
- Communication
- Address concerns, issues, training, cases...
- Focus on coordinated effort

# Goals







# Prosecuting Child Abuse and Drug Crimes

# Child Abuse

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- Child and Vulnerable Adult Abuse

- A.R.S. 13-3623

- Relationship with child necessary

- Endangerment

- A.R.S. 13-1201

- Relationship with child not necessary

# Child Abuse

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- Two kinds of circumstances
  - likely to produce death or serious physical injury 3623(A)
  - other than those likely to produce death or serious physical injury 3623 (B)
  - “Any person having the care or custody of a child who causes or permits the person or health of the child To be injured or placed in a situation where the person or health of the child is endangered is guilty of child abuse.”
- All offenses are felonies, ranging from class 2 to 6
- “Likely” is probable not possible--*State v. Greene*

# Child Abuse

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## ■ A.R.S. 13-3623(C) and Strict Liability

- “The terms endangered and abuse include but are not limited to circumstances in which a child or vulnerable adult is permitted to enter or remain in any structure or vehicle in which volatile, toxic, or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug in violation of 13-3407(A)(4).”

# Child Abuse

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- “Care” and “Custody”
- Suspect relationship to children? *State v. Smith, Swanson and Mahaney*
- A or B circumstances--*State v. Johnson; Greene*

# Drug Crimes

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- A.R.S. 13-3407--Dangerous Drugs
- *State v. Welch*--POCE is a lesser-included offense of Manufacture of Dangerous Drugs
  - A)(1) Possession:A)(2) Possession for Sale
  - ***(A)(3) Possession of Chemicals or Equipment for the Purpose of Manufacturing Dangerous Drugs***
  - ***(A)(4) Manufacture of Dangerous Drugs***
  - A)(7) Transport for Sale, Import, Sell or Transfer



# Drug Crimes

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- Use of a building (barricades) 13-3421
- Conspiracy 13-1003; Facilitation 13-1004
- Other drug offenses (Narcotics, Marijuana)
- Drug Free School Zones 13-3411
- Regulated and Precursor Chemicals 13-3404.01

# Drug Crimes

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- What is a lab: “Manufacture of Dangerous Drugs”
- Active/capable of production?
- Manufacture defined 13-3401(17)
  - Produce (etc) by extraction from substances of natural origin or independently by means of chemical synthesis.....
  - “Manufacture includes any packaging or repackaging or labeling or relabeling of containers.”

# Weapons

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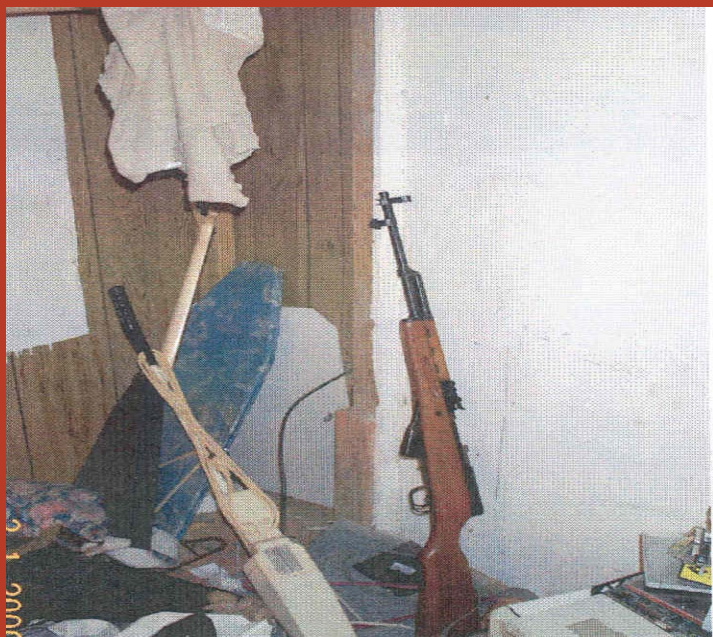
## ■ Misconduct Involving Weapons

### ■ A.R.S. 13-3102(A)(4) (Prohibited Possessor)

- | Undesignated offenses are essentially felony convictions
- | Civil Rights Restoration for guns only after two years or longer off probation 13-905(C); 13-906; 13-912

### ■ A.R.S. 13-3102(A)(8) (Commission of Drug Crime)

- | Sufficient connection “nexus” between gun and drug crime
- | *State v. Petrak*



# Other Crimes

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- Fraud Schemes
- Forgery
- Theft/Shoplifting
- Taking Identity of Another
- Stolen Credit Cards
- Trafficking in stolen property



# Evidentiary Considerations

# Suspect Interview

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## ■ Important questions

- When and where do they manufacture?
- Where are the children during production?
- Do the children have access to the lab?
- How long have they been using/Manufacturing meth?
- Questions surrounding relationship to children
- Admissions about hazards--anything ever caught on fire



# Witness Interview

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- Witnesses: Neighbors, users present at the scene to buy, children, other relatives, etc....
  - Anything unusual they have seen or smelled?
  - Ever seen children in the lab area or around the chemicals, equipment, drugs, or paraphernalia?
  - Children left alone without supervision?
  - Ever seen children's items near the lab?
  - Ever seen the children injured, sick, acting strange?



# Forensic Child Interview

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- Ideally conducted by experienced interviewer
- Don't ask leading questions
- Should be recorded (video and audio)
- Rapport
- "Care and Custody"
- Daily routine?

# Forensic Child Interview

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- Who makes dinner?
- Do older children take care of younger children?
- Is the child ever left alone?
- Does the child have access to the entire house?
- Has the child witnessed drug use?
- Has the child seen drugs, paraphernalia, guns

# Forensic Child Interview

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- When was the last time the child saw doctor or dentist?
- Has the child smelled unusual odors?
- Do mom and dad smoke outside now?
- Has anything ever caught on fire?
- Has food or drink ever smelled or tasted bad?
- Has the child ever been burned?
- Does the child know why the police are there?

# Location of Lab and Chemicals

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- What areas appear to be accessed by children
- Common areas/scattered/food preparation
- Toy/play areas/within reach of children
- Chemicals/substances in refrigerator
- Evidence of recent manufacture

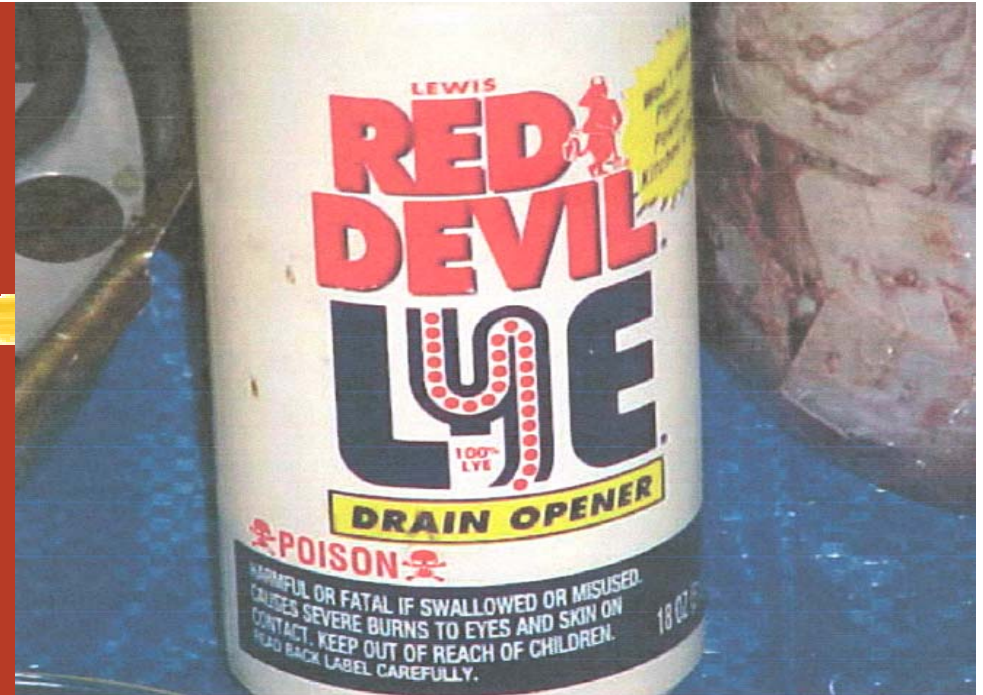
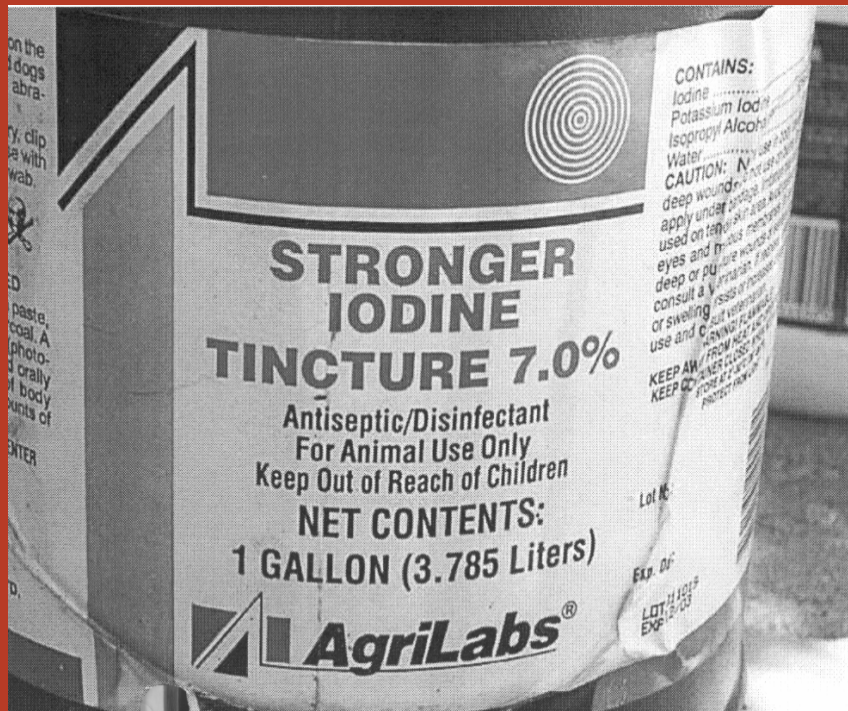
# Photography



- Essential evidence for child abuse
- Extremely important--Lab evidence destroyed
- Take close-up photos of warning labels
- Emphasize neglectful living conditions



**POISON**



**DANGER**



# Parallel Proceedings

# Criminal

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- Investigation
- Case submitted to Attorney General
- Charging decision
- Grand Jury/Preliminary Hearing
- Indictment



# Criminal

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- Arraignment
- Disclosure
- Initial Hearings
- Trial date set
- Plea negotiations

# Criminal

## ■ Pre-trial motions

- Search
- Confession
- Consent
- Motions in Limine
- Other acts A.R.E. 404(b)

## ■ Allegations

- Dangerous Crime Against Children



# Criminal

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## ■ Allegations (cont.)

- Offense committed while on release from confinement 13-604.02(B); 13-604(R)
- Prior felony convictions-enhancement and Impeachment A.R.E 609

## ■ Plea Agreement

- No trial--incentive to accept resolution
- Ensures conviction and early disposition of case
- Children won't be required to testify

# Criminal

- Trial
- Sentencing
- Mandatory prison
  - Manufacture of Dangerous Drugs
  - Dangerous Crimes Against Children



# Criminal

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## ■ Prison

- Class 2, 4 - 10 years, Class 3, 2.5 - 7 years, Class 4, 1.5 - 3 years

## ■ Probation

- Up to lifetime for child abuse 13-902(E)
- Amount of years until child turns 18

## ■ Priors

- Make prison mandatory
- Enhances sentencing range

# Civil (Dependency)

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- Temporary custody
  - Legal and physical
  - Up to 72 hours
  - TCN required
  - Attempt to locate other relatives to avoid court process
- Dependency
  - If greater than 72 hours--Dependency Petition

# Civil (Dependency)

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- Dependency (cont.)
  - Attorney General becomes involved
  - Probable cause burden
  - GAL appointed for children; Attys for parents
  - Court determines child is a dependent child 8-201(13)
  - Mom/dad are still the legal parents
  - CPS has legal custody--reunification is the goal
  - Usually lasts 6-18 months

# Civil (Dependency)

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- Termination of Parental Rights
  - Mom/dad are no longer the legal parents
  - Much more serious legal consequences
  - More significant legal burden--clear and convincing
  - Pursued in egregious cases
  - Adoption
  - Foster care until 18 if not adoptable



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# Environmental Remediation

# New Clean-up Law

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- A.R.S. 12-990; 12-1000; 12-1001 (July 1, 2003)
- Requires clean-up of meth lab site
- Gross Contamination
  - Lab Chemicals and equipment
  - Drugs and residue
  - Tangible objects destroyed



# New Clean-up Law



- Residual Contamination
  - That which is left behind
  - Not necessarily visible
  - Carpets, furniture, floors, walls, appliances, ductwork, countertops, cabinets, sinks, tubs, toilets, etc
- Impact of the new laws
  - Makes mandatory the full clean-up of labs
  - Until clean, persons must be removed from property

# New clean-up Law

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## ■ Impact (cont.)

- Notice must be posted which states property owner must take remedial action to clean up site
- Property owner may not sell or rent until full clean up is complete without notice to buyer
- BTR has developed standards that companies must comply with in order to be on an approved list of remediation firms
- No innocent owner claim or defense

# Contact Information

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